



Arizona Department of Agriculture

Office of Pest Management

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June 11, 2015

Burns Pest Elimination (Business Licensee)
David Gene Burns (Qualifying Party)
Pedro Martinez Rubio (Certified Applicator)

**CONSENT
AGREEMENT/ORDER
Case #100518**

This Consent Agreement/Order resolves allegations that Pedro Martinez applicator issued Termite Treatment Proposal Forms (TTPFs) while not being certified in the category necessary to complete TTPFs and that such activities occurred under the supervision of Burns Pest Elimination and David Burns. Additionally, the TTPFs in connection with this case were void of the company's business license number.

General Nature of Complaint

On 9-8-14, the OPM received a written complaint from a consumer alleging that in March of 2013 Burns billed him for treatments for two properties for which Burns employees did not actually perform. The consumer alleged that Burns employees never contacted him or produce records signed by the tenants of his two properties. OPM interviewed the residents of the rental properties and confirmed that Burns employees had treated the properties. This was confirmed by OPM Inspector Brian Kennedy interviewing the actual tenants and by reviewing company treatment records.

During the course of the investigation, Inspector Kennedy noted that the two properties had termite treatment proposal forms issued by Burns applicator Pedro Rubio. Mr. Rubio was licensed in the 2b (wood destroying insect *inspection*) category. However, TTPFs cannot be issued unless an individual is certified in in the 2a (wood destroying *management (inspection and treatment)*) category.

On 11-19-14 Inspector Kennedy questioned Mr. Burns as to why Mr. Rubio was completing TTPFs without the proper certification. Mr. Burns stated his company registered Mr. Rubio to take "two tests". And, when he asked Mr. Rubio if he passed both test, he replied that he did. In actuality, the two exams Mr. Rubio took were the Core (standard for all initial testers) and Wood Destroying Inspections. Therefore Mr. Rubio would have needed to take and successfully pass "three" exams (inspections,

treatment and core) to be certified in Wood Destroying Management. When Inspector Kennedy asked Mr. Burns if he checked the OPM website to verify if employees were licensed in the appropriate categories, he stated that he has 300 employees and does not have time to verify each one. The following day, Mr. Rubio took and successfully passed the exam necessary to be licensed in Wood Destroying Management.

It should be noted that Inspector Kenney reviewed TTPFs and noted that documents were void of a business license number. On 9-21-12, OPM staff noted this deficiency then directed management staff Sage Burns to correct the deficiency and resubmit the form for approval. Yet, this was never performed. During the course of this investigation, David Burns stated the company was in the process of developing a new TTPF.

The OPM has determined the above actions of Burns Pest Elimination and David Burns violated the following: allowing an applicator issue Termite Treatment Proposal Forms (TTPFs) while not being certified in the category necessary to complete TTPFs. Failing to ensure company's business license number on TTPFs.

Business Licensee Holder and Qualifying Party allowed applicator to issue Termite Treatment Proposal Forms without being certified in wood-destroying organism management.

A.R.S. 32-2323(B) ("Only an applicator certified in the category of wood-destroying organism management shall prepare a treatment proposal on a form approved by the director. The applicator shall deliver a copy of the treatment proposal to the person requesting the proposal or treatment, or the person's designated agent, before beginning treatment.")

A.A.C. R4-29-201 (C, 1) ("An individual who provides pest management services shall be a certified applicator and only provide pest management services in a certification category for which the applicator is currently certified except as provided under subsections (C)(2) and (C)(3) or as otherwise exempt by this Chapter or the OPM's statutes.")

A.A.C. R4-29-407 (B) ("An applicator, qualifying party, branch supervisor, or business licensee who supervises another person may be held jointly responsible for the acts or omissions of the supervised person.") *See also § A.R.S. 32-2323 (A)*

Disciplinary & Corrective Action

The OPM and the respondents have agreed to resolve the above violations upon the respondents accepting the following terms and taking the following actions:

1. It is **ORDERED** that **Burns Pest Elimination, Inc.**, holder of Business License **4181** be issued a **Warning**.
2. It is **ORDERED** that **David Gene Burns**, Certified Qualified Applicator 1059, be issued a **Warning** and obtain **2 hours of continuing education (CE)** in the topics of **Laws and/or QP responsibilities (due within 30 days of the date of this Agreement)**. The CE cannot and shall not be used for license renewal purposes.
3. It is **ORDERED** that **Pedro Rubio** be issued a **Warning** and obtain **2 hours of continuing education (CE)** in the topics of **Laws (due within 30 days of the date of this Agreement)**. The CE cannot and shall not be used for license renewal purposes.


Agreement and Waiver

Each licensee (Respondent) acknowledges that he has read and understands this Consent Agreement/Order, he has had the opportunity to discuss this Consent Agreement/Order with an attorney if desired, and he is entering into this Consent Agreement/Order voluntarily for the purpose of avoiding the expense and uncertainty of an administrative hearing. Each Respondent understands that he has the right to request an administrative hearing concerning this matter, at which administrative hearing he could present evidence and cross-examine witnesses, but that by entering into this Consent Agreement/Order, the Respondent knowingly and voluntarily relinquishes all rights to an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative or judicial action, concerning the matters set forth herein.

The Respondent further understands that this Consent Agreement/Order is a public record that may be publicly disseminated as a formal action of OPM.

By signing below, each party agrees to be bound by this Consent Agreement/Order. If agreeing to this Consent Agreement/Order on behalf of a company or entity, the person signing affirms that he or she has the authority to enter into and bind the company or entity to the terms and conditions of this Consent Agreement/Order. This Consent Agreement/Order may be executed in counterparts and is effective with respect to a Respondent upon the execution of this Consent Agreement/Order by that Respondent and OPM.

RESPONDENTS




Burns Pest Elimination, Business Licensee

6/18/15
Date



David Burns, Qualifying Party Licensee

6/18/15
Date



Pedro Martinez Rubio, Applicator Licensee

6/18/15
Date

OFFICE OF PEST MANAGEMENT



Mark W. Killian, OPM Acting Director

6/24/15
Date